Local Government and Communities Committee

Planning (Scotland) Bill

Submission from the Society of Chief Officers for Transportation in Scotland (SCOTS)

1. Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?

SCOTS would be of the view that, as a whole, the Bill would produce a balanced planning system. It seeks to balance development needs with the needs and aspirations of communities although greater clarity is required in relation to the anticipated working relationship between community planning, the development plan process and a stronger and clearer statutory link between all systems.

As proposed the link is just made is just about taking account of "any local outcomes improvement plan (within the meaning of 25 section 6 of the Community Empowerment (Scotland) Act 2015) for the part of their district to which the local development plan relates as per page 4/58 of the following link [link]

http://www.parliament.scot/Planning%20(Scotland)%20Bill/SPBill23S052017.pdf and as well as the original non-amended legislation set out in the [link]


Clarity in relation to the Local Place Plans is required regarding the role of local authorities in relation to facilitation/involvement, the time period that a Local Place Plan would cover and, the connection with the statutory process of Local Development Plan preparation. Given that such plans would often include a focus on the delivery of transport services and infrastructure the managing of community expectations will be necessary as the potential exists for conflict between communities, local authorities and the development industry. Therefore further clarity of roles and expectations is required.

There are also concerns over how the Bill may reduce the opportunity for local influence on the planning system. Removing the requirement for Strategic Development Plans (SDPs) will shift the statutory nature of strategic planning and will undermine the effectiveness of cross-boundary and region-wide agreements. Replacing the current regional decision making with a national focus through the expanded NPF will remove local accountability further remove the planning process from where there needs to be a commitment to delivery and is at odds with the principle of subsidiarity and returning power to communities.

2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?

The picture across Scotland in terms of house building has been variable with high performing economic areas exceeding targets and placing significant demands on services/infrastructure whilst others have suffered from low demand that has been
further suppressed by the lack of, and difficulties associated with, providing necessary infrastructure. The Infrastructure Levy could go some way to addressing this.

It will be essential that the new housing supply targets set at a national level are accurate and are deliverable. If a lack of deliverable housing sites becomes an issue then it would be helpful if the Bill was amended to identify this as a trigger for an amendment to a Local Development Plan as well as situations where they have been met and there is significant demand. Ultimately the purpose of planning should be to ensure the creation of better places and quality outcomes for communities. This single focus on higher levels of house building cannot achieve this in isolation.

The Society also have concerns in how the aspiration for higher levels of housebuilding will be considered in terms of regional traffic/transport networks without a regional planning/policy led approach across a defined housing market area. Clarity is required on how the impacts of development across housing market areas and local authority boundaries across the variable regional geographies of Scotland will be appraised in a transparent manner that meets local priorities.

3. **Do the proposals in Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?**

The Local Authority transport sector has a long tradition of both partnership and regional working and our experience within SCOTS is that this has typically been replicated within the Planning sector. However, the proposals within the Bill do not contain a statutory direction to ensure partnership and regional planning across local authorities or indeed take enough cognisance. If the Bill were to include a direction to cooperate on a continuing regional basis using a structure agreed by the local authorities themselves then the key elements previously considered by Strategic Development Planning Authorities could be more specifically linked to ensure regional transport, economic development and housing strategies are aligned.

The requirement for a statutory plan ensured that local authorities worked together and reached agreements on a strategic, cross-boundary range of policies and development proposals based on regional needs. Removing SDPs and taking power to a national level will result in a loss of influence regionally. New regional partnerships should continue to have a statutory basis and the requirement to prepare regional plans. These could be integrated with current and future Regional Strategies on economic development, infrastructure, transport, health, skills and planning. This then could help ensure a consistent and cohesive approach to the future development of our city regions.

4. **Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?**

Provisions seeking to better align community planning and spatial planning are welcomed in order to recognise they play on improving local outcomes. However, SCOTS have concerns surrounding the removal of the main issues report in that it
previously allowed policies and allocations to be properly explored and alternatives considered by local communities. The introduction of a gate check is welcomed.

Seeking “buy in” at an early stage of the plan making process can only help to ensure a smooth process for local development plan preparation but may favour the more affluent localities and not fit with wider equalities duties on engagement with public life. You therefore need an accessible planning system, not a highly technical consultation.

We also have concerns that removing supplementary guidance would have the effect of potentially significantly increasing the size of the local development plan which goes against the aim of producing a leaner and clearer plan. Our experience is that the use of supplementary guidance is an effective tool in delivering plans and policies locally, regionally and nationally.

5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?

The expansion of Simplified Development Zones (SDZ) from the former Simplified Planning Zone (SPZ) should only be targeted at areas where it is clear that the planning or regulatory system is seen as a barrier to development. The incorporation of Road Construction Consent (RCC), into the remit of SDZs will make these areas more attractive to potential developers as an issue with SPZs was that even with the principle of development being established technical matters such as RCC could hold up development if the developer had not properly considered these matters.

In relation to the safeguards for community interests, the proposals allow for front loading or early engagement in relation to the creation of the zones which would seem compatible with the requirements under Community Empowerment/Community Planning. In practice however it is the case that communities/individuals do not always engage with the planning system until such a time as a proposal is well developed and likely to directly impact upon them. By frontloading the system and indicating a potential range of uses or specifications for new development an opportunity will be available for community interests to be considered. However, the final check/balance, or most utilised opportunity for communities/individuals to become involved may be lost.

For environmental interests the simplifying of regulation and removal of checks/balances is often not completely compatible with the desire to enable development. Consultation with stakeholders at the designation stage will provide an opportunity for consideration to be given about how to maintain/protect these interests but care will need to be taken to ensure that in an effort to avoid any ‘worst case’ or unforeseen impact upon these interests that the aim of the SDZ is not undermined or that potential developers are not seen to be overly restricted. Given the subsequent impacts of developments on matters such as air quality and flood risk their needs to be proper safeguards built into the new SDZ process.

6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area? Will the proposed Local Place Plans enable communities to influence local
development plans and does the Bill ensure adequate financial and technical support for community bodies wishing to develop local place plans? If not, what more needs to be done?

In response to the first part of the question yes it does provide more avenues for community involvement in the plan making process. However, at this time it is believed that the Bill proposes too much in the way of flexibility, has properly considered how other “plans” are produced within communities and we therefore far more clarity is required with regard to the preparation, role and purpose of LPPs.

On the second part of this questions yes it should allow them to influence LDPs but further guidance is required as to how LPPs would be prepared, and what support would be provided, if any, by all of the constituent teams within planning authorities. It is not clear from the Bill what period a LPP would cover, or what public consultation, if any, would be required prior to publication, and inclusion as part of a statutory LDP. It is also assumed that LPPs would require to put forward deliverable actions/land allocations, rather than being aspirational, in order to align with the revised focus of LDPs and this would require input from roads and transport authorities/bodies.

Clarity is required to ensure that LPPs complement any Community Action Plan, and does not lead to duplication of effort, or confusion.

With regard to the financial and technical support to communities, the Financial Memorandum accompanying the Bill outlines that support from Scottish Government and Planning Authorities would form part of discretionary funding. However, it is not felt that the costs to all transport and roads related bodies have been fully considered in the memorandum and that significant technical support will also be required to ensure that the LPPs are sufficiently robust.

Clarity is required as to how the costs have been derived, how financial/technical support will be provided to the Community bodies to produce the plans and how additional costs to the wider public sector in supporting this process will be built into future funding settlements. For instance should all community councils across Scotland decide to prepare a LLP, plus all other community bodies falling within the definition, then the burden on the public sector to support the preparation of such plans will be considerable.

7. Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how these could provisions be improved?

The introduction of charging orders is a positive step and brings Planning Enforcement closer in line with how other legislation is applied.

8. Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development? Are there any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and amenities to support land development? Are there lessons that can be learned from the Infrastructure Levy as it operates in England?
Under the auspices of the Town and Country Planning (Scotland) Act 1997, the Planning (Scotland) Act 2006 and Circular 3/2012: Planning Obligations and Good Neighbour Agreements, developer obligations are calculated and secured on a site by site basis.

A significant failing of current legislation relates to how and when developer obligations are paid to Councils. The amount paid to a Council is dependent on the number of houses built and the rate at which houses are built. This means that any delays in the delivery of housing or a reduction in the numbers of houses built will have a direct impact on the level of developer obligations income.

Many Councils will have hundreds of individual sites that have been granted planning permission with an agreed package of developer obligations. However, it can often be the case that many cannot be delivered due to infrastructure constraints outwith the Council’s control. Circular 3/2012 dictates that developer obligations can only be secured to mitigate the impact of development and that the spending of developer obligations must be related to the impact of the contributing development. This means that for example it is outwith the scope of current developer obligations legislation to mitigate the impact of development on Scottish Water’s water and drainage network, telecommunications etc.

As most packages of developer obligations are secured by planning obligations agreed under Section 75 of the Town and Country Planning (Scotland) Act 1997 as amended, this means developers can challenge the reasoning for securing developer contributions or reduce the level of contributions they had previously agreed to if there has been a change to the circumstances in which the obligations were originally secured.

Together, these elements of the current legislation and guidance governing developer obligations impact significantly on the financing and delivery of Capital Projects, often increasing the Council’s borrowing costs due to the creation of a funding gap. The funding gap is created by the loss of developer obligations income through sites that are granted planning permission being undeliverable due to infrastructure constraints or the removal or reduction in developer obligations obtained through Section 75A of the Act.

In terms of development viability the current legislation and guidance creates an environment of uncertainty in the amount of contributions (financial and works in kind) that developers require to provide. Limitations to the infrastructure that local authorities can provide meaning that in most cases development that is granted planning permission and a package of developer obligations is agreed cannot be delivered due to infrastructure constraints outwith the local authority’s control. This is particularly relevant when it concerns delivery of projects on the trunk road network. In some situations the position of the Trunk Road Authority is that it shall secure funds associated with mitigation of the impact on their network but then seek to pass the responsibility for advancing those improvements onto the Local Authority for that area. SCOTS are of the view that this is not a competent approach.

Introduction of an infrastructure-levy will provide certainty at the outset about how much money developers/land owners will be expected to pay, when they pay and how they pay. It can deliver additional funding for local authorities to carry out a wide
range of infrastructure projects that support growth and benefit the local community and enable Council’s to address infrastructure constraints impacting on the delivery of the Local Development Plan and sites with planning permission. It shall also enable flexibility and freedom, the ability to plan ahead more effectively and ensure greater transparency.

Although the introduction of an infrastructure levy in Scotland should in theory enhance the level of funding available to local authorities to deliver infrastructure it may take a significant amount of time for this to become a reality. When CIL was first introduced in England and Wales local authorities averaged 35% of their anticipated annual levy income between 2010 and 2012. This is because the CIL is only applicable to new developments rather than existing planning permissions bound by Section 106 Agreements. Therefore, due to the time taken for new planning permissions to be implemented there would be a delay in levy income generation. Although contributions secured under the current developer obligations system would continue to be paid while the infrastructure levy is introduced the anticipated uplift in income generated by the proposed levy would not be instantaneous and is not a quick fix to infrastructure funding.

There is no doubt that an infrastructure levy shall benefit local authorities engaging in infrastructure projects to support the delivery of development in their area. However, the issue of how and when levy payments should be made requires to be detailed either through the principal legislation or associated regulations both of which will require significant work by authorities and agencies.

It should be noted that by applying an “Infrastructure” levy, there is an assumption that funding will be directed solely towards capital schemes to provide infrastructure such as roads and railways stations. However, in practice it may be that smaller scale initiatives, often requiring revenue subsidy (such as supporting a bus service or allowing for a car club or bicycle hire scheme) may have greater influence on mode shift and mitigating the impact of a development. Any future fund to enable implementation of strategic transportation schemes should reflect that in its title and be flexible in terms of capital and revenue implications.

Indeed SCOTS would wish to highlight the ongoing under investment in the maintenance of our transport network both in terms of road asset maintenance and support to local passenger transport services. The Audit Scotland Reports of 2011, 2013 and 2017 have all highlighted the decreasing investment in maintaining the most valuable asset that the public sector owns and the recent response to Audit Scotland by the Strategic Action Group as released on 30 January. [https://www.transport.gov.scot/publication/road-maintenance-strategic-action-groupresponse-to-audit-scotland-report-maintaining-scotland-s-roads-a-follow-up-report/](https://www.transport.gov.scot/publication/road-maintenance-strategic-action-groupresponse-to-audit-scotland-report-maintaining-scotland-s-roads-a-follow-up-report/)

The issues within this response can only be addressed through a range of actions and every new piece of infrastructure will require to be maintained in the future. SCOTS are therefore of the view that any Infrastructure Levy should consider how development should address the use and maintenance of current and future transport networks, both physical and operational.
9. Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?

Yes, this requirement is supported. It however should be taken into account that training is already mandatory for elected members within many Councils.

10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

The new proposals will undoubtedly retain the focus on performance. A better resourced planning system with increased fees will have to result in improved performance and greater certainty for its customers. However, there also requires to be a recognition that whilst the fees may cover the direct planning functions there are also significant resources required to provide wider technical advice on other key areas such as roads, transport, flooding and environment that are not typically funded through the fees, despite them playing a key role in meeting the performance targets.

11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high –performing planning system the Scottish Government wants? If not, what needs to change?

It is agreed that an increase of fees is required to cover the cost of effectively resourcing a planning service, but a balance must be struck to avoid fees becoming prohibitive to development. Whilst discretion to charge fees is welcomed, consistency is also required in what can and cannot be charged for and avoid local flexibility causing dubiety and uncertainty. There may be a case for imposing a national fee scale for ‘other charges’ such as pre-application services etc where currently only some authorities have chosen to set charges for this. Prior to any fee setting, the recently suggested costing exercise should be undertaken across all authorities to consider the true costs of providing the Planning Service.

The final point at Q10 should also be taken into account when considering whether the whole system is adequately funded.

12. Are there any other comments you would like to make about the Bill?

Yes SCOTS would like to refer to the previous responses that we have submitted; March 2017 Response:

consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&_q__text=Society&uuId=959051869.

June 2017 Position Statement:

https://consult.gov.scot/planning-architecture/placespeople-
In relation to infrastructure, whilst the proposed Infrastructure Levy deals with ensuring infrastructure is available to benefit and incentivise the delivery of development, it would be worth considering that provision is made for future expansion/upgrade of existing infrastructure at an early point in the process. This could include how best to allow for advances in technology and infrastructure related to issues such as broadband/wireless technology that will be required as we see a move towards low carbon transport, enhanced traffic systems and autonomous vehicles.